IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

OP.No. 4946 of 2000(L)

PETITIONER:

N.J.CHACKO,
NEROTH HOUSE,
ALAPPUZHA.

BY ADV. SRI.C.KOCHUNNY NAIR
SRI.DALE P.KURIEN

RESPONDENTS:

THE COMMISSIONER OF INCOME-TAX,
TRIVANDRUM.

BY ADV. SRI.P.K.R.MENON(SR.),SC FOR IT
SRI.GEORGE K. GEORGE, SC FOR IT

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 28/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF ORDER DT.25.10.93 OF THE INCOME-TAX APPELLATE TRIBUNAL, COCHIN BENCH.

P2: TRUE COPY OF ORDER OF THE COMMISSIONER OF INCOME-TAX DT.25.6.1999.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.4946 of 2000

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Dated this the 28th day of November, 2007.

JUDGMENT

Heard counsel for the petitioner and Standing Counsel appearing for the respondents. The petitioner is challenging Ext.P2 order whereunder the Commissioner has granted only partial waiver of interest levied under Section 139(8) and Section 215 of the Income Tax Act for the assessment years 1983-84 and 1984-85. The petitioner's case is that returns were filed under amnesty scheme and he is entitled to complete waiver of interest as against partial waiver granted by the Commissioner. Standing Counsel submitted that petitioner filed original return on 29.10.1985 i.e. prior to introduction of amnesty scheme and such return disclose taxable income. However, petitioner filed a return on 31.3.1986 under the amnesty scheme under which an additional income of Rs.1,25,000/- was disclosed. It is seen from the Commissioner's order that petitioner is granted full waiver of interest levied under the above two Sections for the additional income returned in the return filed under amnesty scheme. Even though counsel for the petitioner cited decision of the Calcutta High Court in COMMISSIONER OF INCOME TAX V. SAVOY ENTERPRISES

LIMITED (211 ITR 192) and contended that the said decision applies to petitioner's case, I am unable to find anything in favour of the petitioner in the said decision. The court in that case held that amnesty benefit should be available to old assessees also. Original return filed by the assessee in that case was a loss return and therefore, the entire income assessed is based on return filed under the amnesty scheme. However, in this case prior to the introduction of amnesty scheme petitioner had filed regular return, though with delay, declaring taxable income and all consequences would have followed had the petitioner not filed any return under the amnesty scheme. Therefore, benefit is available under the amnesty scheme only with reference to additional income returned. I find the Commissioner has completely waived interest on the additional income returned and therefore, petitioner was granted full amnesty benefit. The O.P. is devoid of any merit and is dismissed.

C.N.RAMACHANDRAN NAIR
Judge

pms